



# **The Commonwealth of Massachusetts**

## **DEPARTMENT OF PUBLIC UTILITIES**

D.P.U. 08-127

December 16, 2008

Investigation and Study by the Department of Public Utilities, pursuant to St. 2008, c. 168, § 109, into Ex Parte Communications in Contested Department of Public Utilities Proceedings.

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### **VOTE AND ORDER OPENING INVESTIGATION**

## I. INTRODUCTION

On July 2, 2008, Governor Deval Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires the Department of Public Utilities (“Department”) to open an investigation and study relative to ex parte communications in any contested, on-the-record proceeding before the Department. St. 2008, c. 169, § 109. The Department must report the results of its investigation and study to the General Court, along with any recommendations and necessary draft legislation to implement those recommendations, on or before April 1, 2009.

## II. DEPARTMENT REGULATIONS

On September 18, 2008, the Department issued an Order adopting numerous revisions to its regulations. Order Adopting Regulations, D.P.U. 07-105 (2008). These changes included a new section codifying the Department’s long-standing policy prohibiting Commissioners, presiding officers, and Department staff from engaging in ex parte communications on substantive matters in an adjudicatory proceeding. D.P.U. 07-105, at 5-7, 23-24; 220 C.M.R. § 1.02(9). The Department amended its regulations to specifically detail the ex parte communication restrictions to reinforce the importance of these rules in ensuring that Commission decisions are not influenced by impermissible off-the-record communications, as well as ensuring public understanding of the requirements. D.P.U. 07-105, at 23.

### III. SOLICITATION OF COMMENTS

To provide the opportunity for comment, and to investigate and study ex parte communications relative to contested Department proceedings, pursuant to St. 2008, c. 168, § 109, the Department will hold a public hearing on January 16, 2009 at 10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments related to the sufficiency of the Department's ex parte communication regulations, or otherwise relevant to ex parte communications in contested Department proceedings. The Department seeks initial written comments no later than 5:00 p.m. on January 16, 2009. Initial written comments should be limited in length to a maximum of ten one-sided, double-spaced typewritten pages. Following the public hearing, reply comments must be filed by 5:00 p.m. on January 23, 2009. Reply comments should be limited in length to a maximum of ten one-sided, double-spaced typewritten pages. All written comments should be filed with Mary L. Cottrell, Secretary, Department of Public Utilities, One South Station, 2<sup>nd</sup> Floor, Boston, Massachusetts 02110.

All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dpu.efiling@state.ma.us](mailto:dpu.efiling@state.ma.us), and [laura.koepnick@state.ma.us](mailto:laura.koepnick@state.ma.us), hearing officer; or (2) on a 3.5" disk or CD-ROM. The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 08-127); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. Data or

spreadsheet responses should be compatible with Microsoft Excel (version 2000). The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. All documents submitted in electronic format will be posted on the Department's website:

<http://www.mass.gov/dpu>.

IV. ORDER

Accordingly, the Department

VOTES: To open an investigation and study into ex parte communications in contested Department of Public Utilities proceedings; and it is

ORDERED: That the Secretary of the Department shall publish notice of this investigation in a statewide paper of daily circulation within the Commonwealth; and it is

FURTHER ORDERED: That the Secretary of the Department shall serve a copy of this Order upon all persons on the Department's service list.

By Order of the Department,

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/s/  
Paul J. Hibbard, Chairman

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/s/  
W. Robert Keating, Commissioner

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/s/  
Tim Woolf, Commissioner